UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re: AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Honorable Marianne O. Battani
In Re: BODY SEALING PRODUCTS	2:16-cv-03402 2:16-cv-03403
This Document Relates to: All Auto Dealer Actions All End-Payor Actions	**Oral Argument Requested**

REPLY IN SUPPORT OF DEFENDANT GREEN TOKAI CO., LTD'S MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS

INTRODUCTION

Plaintiffs' joint Opposition (Dkt No. 35) makes sweeping claims, untethered from their complaints, to pretend that the fatal deficiencies GTC has identified do not exist. While Plaintiffs' complaints against other defendants (regarding separate alleged conspiracies with completely different parts and suppliers) might have alleged "an industry-wide conspiracy affecting all OEMs" (Opp. at 4), their complaints against GTC do not. Instead, Plaintiffs identify only three Japanese OEMs as targets of the alleged conspiracy or customers of the named defendants in the Body Sealings cases: Honda, Toyota and Subaru. There is nothing in either complaint to plausibly suggest that defendants' sales of body sealings to Honda, Toyota or Subaru could impact purchasers of a Ford, GM, Volkswagen, or other non-Japanese brand of vehicle. Moreover, Plaintiffs' naked claims of a broad, industry-wide conspiracy—found nowhere in their complaints—are inherently implausible as this Court now has determined in denying Plaintiffs' motion to amend and consolidate several prior complaints to allege an industry-wide conspiracy. Such bare assertions are insufficient to survive a motion to dismiss.

I. PLAINTIFFS FAILED TO ALLEGE AN INDUSTRY-WIDE CONSPIRACY TARGETING ANY NON-JAPANESE MANUFACTURERS

Recognizing that they failed to allege facts to plausibly support an "industry-wide" conspiracy claim in their complaints, Plaintiffs seek to amend and re-focus their allegations through their Opposition brief, citing a statement made by the DOJ referencing a "broad industry-wide conspiracy," and a list of Japanese and Chinese customers on GTC's Japanese parent's website in an attempt to show the alleged body sealing conspiracy affected other OEMs (Opp. at 8-9, 17). These new allegations would not save the complaints from dismissal, but cannot be considered in any event because "a court 'may consider only matters properly part of the complaint or pleadings in deciding the motion [to dismiss].'" *Bricker v. R & A Pizza, Inc.*, 804 F. Supp. 2d 615, 619 (S.D. Ohio 2011) (quoting *Armengau v. Cline*, 7 F.Appx. 336, 344 (6th Cir. 2001)); *see also Glazer v. Chase Home Fin. LLC*, 704 F.3d 453, 459 (6th Cir. 2013).

A. Plaintiffs Do Not and Cannot Allege a Multi-Part Mega-Conspiracy

Plaintiffs incorrectly claim that they alleged "an industry-wide conspiracy" in their complaints. (Opp. at 4). They tellingly offer no citations to their complaints, however, because they include no such allegations. Neither complaint contains facts to plausibly claim that the alleged conspiracy affected every single OEM—or even a single, non-Japanese OEM. Rather the EPPs state that "the OEMs that were affected by the conspiracy had departments located in the United States … ***Honda's*** purchasing department is located in Raymond, Ohio, and ***Toyota's*** purchasing department is located in Erlanger, Kentucky." (EPP Compl. at ¶ 20 (emphasis added)). No other OEMs are identified, nor could they be.

In their opposition, Plaintiffs argue that because their factual allegations are characterized as "examples" or they include boilerplate language like "including, but not limited to" they have somehow pled *other* facts sufficient to plausibly allege a broader conspiracy. (Opp. at 5, 9, 15). However, Plaintiffs alleged no facts to plausibly suggest non-Japanese OEMs like GM, Ford or Fiat-Chrysler were affected. Under *Twombly* "[c]onclusory allegations or legal conclusions masquerading as factual allegations will not suffice." *Mauldin v. Napolitano*, No. 10-cv-12826, 2011 WL 3113104, at *2 (E.D. Mich. July 26, 2011) (Battani, J.) (quoting *Bishop v. Lucent Technologies, Inc.*, 520 F.3d 516, 519 (6th Cir. 2008)). *Twombly* and *Iqbal* require more than a possible inference that could be drawn from wishy-washy language to allege a huge, industry-wide conspiracy impacting every single OEM; they require specific factual allegations.

Plaintiffs also improperly seek to rely a single statement by the DOJ's William Baer regarding the scope of the Antitrust Division's criminal investigation found nowhere in their complaints. (Opp. at 8-9). Even if alleged in the complaints, however, the scope of the DOJ's investigation does not plausibly suggest a broad "mega-conspiracy" involving body sealings and affecting every OEM. *See In re Instrument Panel Clusters*, No. 12-cv-000202, Doc. 162, at 9 (E.D. Mich. Apr. 13, 2016) (Order denying Plaintiffs' motion to amend in multiple cases) (finding Plaintiffs' factual allegations "support the DOJ's assessment that the conspiracies are multiple, separate, and product-specific").

Moreover, the Court has already rejected claims alleging such an industry-wide conspiracy when it denied Plaintiffs' recent motion to amend and consolidate in other cases:

> There are no allegations in the [complaints] of deals between makers of different component parts, and no inference arises of knowledge outside of each Defendants' own specific deals. There are no allegations that Defendants competed for the sales of all eighteen [or 38] parts. There are no allegations to support that each Defendant knew of other Defendants' conduct for other products. The [complaints] merely advance allegations of separate conspiratorial conduct between different Defendants making different parts. These examples are sufficient to plead the existence of a common purpose among subsets of Defendants as to particular component parts, but are not sufficient to plead one, global auto parts conspiracy. Defendants must all be parties to an agreement, and the allegations advanced by IPPs do not create an inference of a conscious commitment to a common scheme to fix the prices of automotive parts sold to OEMs; that is a single conspiracy with DENSO at the center. *See In re Travel Agent Comm'n Antitrust Litig.*, 583 F.3d 896, 907 (6th Cir. 2009).

No. 12-cv-000202, Doc. 162, at 8-9. The Court appropriately rejected the proposed industry-wide allegations even where there was a common supplier of multiple parts (*i.e.*, Denso) and specific allegations of industry-wide conduct, which are not present here. *Id.* at 7-9. In the complaints at issue, Plaintiffs make lack sufficient factual allegations to support an "industry-wide" conspiracy. Plaintiffs' new theory cannot provide their missing causation link.

B. Plaintiffs Do Not Allege Any Conspiracy Impacting Non-Japanese OEMs

The only OEMs named in Plaintiffs' complaints as victims of the alleged conspiracy are three Japanese OEMs: Honda, Toyota and Subaru. (EPP Compl. at ¶¶ 7-10, 20). While this Court has previously held that a defendant's plea agreement might not limit the scope of plaintiffs' claims, (Opp. at 8-11), plaintiffs *are* constrained by the actual allegations in their complaints. *See Bricker*, 804 F. Supp. 2d at 619; *Glazer*, 704 F.3d at 459. Here, Plaintiffs do *not* allege that any defendant sold body sealings to any other OEM besides these three Japanese OEMs. Even if the Court assesses Plaintiffs' allegations "holistically," those allegations must be found within the four corners of Plaintiffs' complaints. The complaints do not allege that any OEMs besides Honda, Toyota and Subaru were impacted by the alleged conspiracy.[1]

Plaintiffs now improperly claim that the conspiracy might have involved sales to OEMs beyond those identified in Plaintiffs' complaints, and ask the Court to rely on a page from dismissed defendant Tokai Kogyo Co., Ltd's ("TK") Japanese website to expand the allegations in their complaints. (Opp. at 17). Plaintiffs' attempt to use their opposition brief to amend their complaints and allege a new conspiracy should be rejected. *See Glazer*, 704 F.3d at 459. Moreover, even if allegations that TK sold to other Japanese and Chinese OEMs had been included, it does not make Plaintiffs' allegations that they indirectly purchased body sealings from Defendants any more plausible since TK's Japanese sales to foreign customers could not give rise to Plaintiffs' claims in this litigation. (*See* EPP Compl. at ¶ 1 (claims related to "market and customers in the United States"); ADP Compl. at ¶ 1 (same)). Plaintiffs never allege that any defendant sold body sealings to any U.S. or European OEMs.

As also noted in GTC's motion, neither complaint specifically alleges that Defendants "supplied other OEMs" besides Honda, Toyota and Subaru. *See, e.g., In re Heater Control Panels*, No. 2:12-cv-00403, Doc. 93, at p. 13, 2014 WL 2999203 (E.D. Mich. July 3, 2014); *In re Occupant Safety Systems*, 50 F. Supp. 3d 869, 883 (E.D. Mich. 2014). Nor do they allege that the majority of the relevant market was impacted by the alleged conspiracy. *Id.* Thus, Plaintiffs have not pled any specific factual allegations to connect their alleged purchases to the claimed conspiracy, which requires dismissal. *See, e.g.*, *Magnesium Oxide*, 2011 WL 5008090 at *7; *Apple iPhone*, 2013 WL 4425720 at *6. Plaintiffs' conclusory allegations of purchases without identifying what they purchased and purported new facts concerning Defendants' sales are insufficient to plausibly infer the necessary causation link.

---

[1] As noted in GTC's opening brief, the ADPs failed to specifically allege the brands of vehicles potentially affected by the alleged conspiracy. The ADPs failed to even allege the OEMs to whom defendants sold body sealings. (*See* ADP Compl., ¶ 69 (apparently alleging that some unspecified OEMs "purchase Body Sealings directly from Defendants")).

II. PLAINTIFFS LACK ARTICLE III STANDING BECAUSE THEY DID NOT AND COULD NOT ALLEGE NECESSARY FACTS ABOUT THEIR VEHICLE PURCHASES FOUND IN PRIOR COMPLAINTS

Plaintiffs Opposition appears to incorrectly suggest that plaintiffs are not "required to plead that they purchased and/or leased new Vehicles manufactured by specific OEMs that had purchased Body Sealings from Defendants." (Opp. at 7). However, pleading that they purchased vehicles manufactured by Defendants' customers—or, more accurately, alleged targets of the claimed conspiracy—is the bare minimum required to establish constitutional standing. *See, e.g., In re Apple iPhone Antitrust Litig.*, No. 11-cv-06714, 2013 WL 4425720, at *6 (N.D. Cal. Aug. 15, 2013) ("At a minimum, Plaintiffs must allege facts showing that each named Plaintiff has personally suffered an injury-in-fact based on [Defendants'] alleged conduct. This requires that Plaintiffs at least purchased [the products at issue]."); *In re Magnesium Oxide Antitrust Litig.*, Civ. No. 10–5943, 2011 WL 5008090, at *7 (D.N.J. Oct. 20, 2011) (dismissing indirect purchaser complaint that failed to identify the "specific products ... purchased"). Contrary to Plaintiffs' arguments, GTC's motion to dismiss Plaintiffs' complaints for failing to allege that they purchased vehicles manufactured by OEMs to whom Defendants sold body sealings does not rely on any material outside of the pleadings: Plaintiffs' simply have not alleged that they purchased vehicles from Defendants' customers. That deficiency alone requires dismissal.

As noted above, Plaintiffs' allegations against GTC fall short of those the Court addressed in prior motions to dismiss cited by Plaintiffs. Neither complaint specifically alleges that Defendants "supplied other OEMs" besides Honda, Toyota and Subaru nor alleges that the majority of the relevant market was impacted. *See, e.g., Heater Control Panels*, 2014 WL 2999203; *Occupant Safety Systems*, 50 F. Supp. 3d at 883. Plaintiffs' conclusory and vague allegations that they purchased body sealings from Defendants, without stating any facts to make such allegations plausible, are insufficient to show Article III standing.

Plaintiffs' attempts to distinguish cases requiring that indirect purchaser plaintiffs allege they actually purchased products manufactured or sold by the targets of the alleged conspiracy (through some identified distribution chain) should not be credited. (Opp. at 14-15). Plaintiffs have offered no authority that constitutional standing requirements can be met without allegations that they purchased products from defendants' customers. The *Apple iPhone* case appropriately held that the purchaser of an iPhone cannot automatically be assumed to have purchased application software for that device. 2013 WL 4425720 at *6. Accordingly here, it cannot be assumed that Plaintiffs purchased vehicles containing body sealings sold by defendants simply because they purchased undisclosed vehicles, especially where there is no allegation that any non-Japanese OEMs were affected by the alleged conspiracy. *Magnesium Oxide* offers the equally common-sense holding that in a large, diverse market—like the one for automotive vehicles—it cannot be assumed that every product is impacted when conspiracy allegations relate only to specific products. 2011 WL 5008090, at *7. Since Plaintiffs' complaints do not allege that any OEMs besides Honda, Toyota and Subaru were customers of defendants or targets of the alleged conspiracy, they have not established any link between their purchases and Defendants' sales to those Japanese OEMs, and therefore, Plaintiffs lack Article III standing.

Dated: January 6, 2017

Respectfully submitted,

BARNES & THORNBURG, LLP

/s/ Bradley Love
Kendall Millard
Bradley Love
11 South Meridian Street
Indianapolis, IN 46204-3535
Tel: 317-231-7461
Fax: 317-231-7433
Kendall.Millard@btlaw.com
Bradley.Love@btlaw.com

Valerie Mullican (# P74045)
171 Monroe Avenue N.W., Suite 1000
Grand Rapids, Michigan 49503
Tel: 616-742-3930
Fax: 616-742-3999
valerie.mullican@btlaw.com

Counsel for Defendant Green Tokai Co., Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January, 2017, I caused a true and correct copy of the foregoing REPLY IN SUPPORT OF GTC'S MOTION TO DISMISS END-PAYOR PLAINTIFFS' AND AUTO DEALER PLAINTIFFS' CLASS ACTION COMPLAINTS to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Bradley Love
Bradley Love
11 South Meridian Street
Indianapolis, IN 46204-3535

Counsel for Defendant Green Tokai Co., Ltd.